

THE



King

Lord Bishop of Londonderry's

C A S E :

With some Reasons humbly offered to the Consideration of the Lords in *England*, to induce their Lordships not to take cognizance of an Appeal lately brought before them by the Society and Assistants of *London* for *Ulster* in *Ireland*, against an Order of the House of Lords in *Ireland*, made the last Sessions of Parliament there.

THOUGH the Title upon the Merits is not now to be debated before the Lords, yet it is necessary to show the Fact on which this Appeal has been brought, for on that arises the Question about the Jurisdiction.

The Predecessors of the Bishop in right of the Church were seized of the Lands in Question ever since any Settlement of the Church in *Ireland*, and so long since as the 11th of *June*, 1638. Dr. *Bramhall*, the then Bishop, by Virtue of Acts of Parliament of *Ireland*, 10th and 11th *Car. 1.* granted them in Lease to the Corporation of *Londonderry*, at 50 *l.* yearly Rent for sixty Years, from the 14th of *July*, 1634. which Lease ended the 14th of *July*, 1694. and saving the Twelve years Troubles of *Cromwell's* Time, the Rent, and even the last Quarters Rent was constantly and duly paid by them; and they by their Council, Mr. *Cairnes*, and others, applied for a new Lease; but the Bishop not agreeing to such undervalue and unreasonable Terms as they proposed, there was thereupon an Attempt to disseize the Bishop of his Freehold, by means of the said Mr. *Cairnes*, also Agent for the said Society, and of one *Harvey*, Chamberlain of the said Corporation, and of the Under-tenants, who lived on the Premises; and they pretended to set up a Title in the Society, and agreed to take a Lease from them at 90 *l.* 10 *s.* per Annum; and partly by force in some places, and by practices with the Under-Tenants, who pretended to attorn in other places, they endeavoured to get the Possession.

The Bishop, to save the Church from being stript of its Patrimony by such Contrivances and Frauds as were in this Case, where all the Confederates by several sorts of Rewards for their Practices had made themselves Parties, and interested therein, and there being no Remedy to regain the Possession upon the Statutes of forcible Entry, by reason it was within the Liberties of *Londonderry*, where no Justices of the Peace have any Power but themselves, who were interested or concerned therein: According to the common Usage in that Kingdom, brought a Bill in Chancery, there to be by Injunction quieted in his Possession, and had the Common Affidavit of his Possession; and the Cause coming to be heard on the 11th of *June*, 1697. both the Chief Justices being called by the Lord Chancellor for his Assistants, declared, That the Bishop ought to be restored and quieted in his Possession. But the Lord Chancellor declared, That though the Society had no right to the Possession, yet he could not grant any Injunction to quiet the Bishop's Possession, till it were tried by a Jury, whether the Bishop, or his Predecessors, were ever in actual Possession, so as to have a Right to the Possession at the Expiration of the Lease; conceiving the Justice of the Case to be, that if the Bishop were ever in actual Possession, he ought to be adjudged so at the Expiration of the Lease; yet he would not order an Injunction.

And on a second hearing of the 30th of *June*, his Lordship was pleased to decree, That if the Lord Bishop of *Londonderry*, or any of his Predecessors, ever were in the actual Possession, or in such Possession by the Receipt of the Rents during the Lease, that doth by Construction of Law give the Lord Bishop a Right to the actual Possession upon the Expiration of the Lease, that then he ought to be quieted

quieted in his Possession by Injunction of this Court ; but if the Lord Bishop, or any of his Predecessors never were in any such Possession, then this Court cannot grant an Injunction, therefore a Tryal at Law shall be directed upon an Issue proper. From which Decree the Bishop appealed to the Lords there, who taking the Possession of the Bishops Tenants to be the Possession of the Bishop, as the Chief Justices had done, and the Lords having a just Indignation against the undue Practices and Treacheries which they saw proved in this Case, they did thereupon alter that Decree, and ordered the Bishop's Possession to be quieted, which is no more than has been constantly till now in such Cases done there by the Court of Chancery, and can be no wrong to the Society ; for if they have any Right, they may bring their Action, and try it at Law as soon as they please. But instead of that, they have brought this Appeal against the Order of the Lords in Ireland ; and thereupon your Lordships seeing it *prima impressionis* ; and that such an Appeal had never been before attempted from the Lords in Ireland, were pleased not to read the Petition of Appeal, but to direct Presidents to be sent from thence, touching the Method of Appealing from the Chancery there. And on these Presidents, and what others are to be offered here, and the reasons of this Case ; It is humbly hoped that your Lordships will not take cognizance of this new sort of Appeal.

Co. 1. Inst. 81.
Dyer, 376.

I. It must in the first place be allowed, that no Court whatsoever hath any Right of Jurisdiction, but either by Usage and Prescription, or by Grant ; and neither of these can be pretended in this Case ; for from the beginning to this time, there never before was any Appeal brought from the Lords of Ireland to the Lords of England ; and it must be granted to be a strong Argument, That as my Lord Cooke says, what never has been done, ought not to be done, nor can be done.

II. In the next place 'tis to be considered, That the Lords in Ireland have for many Ages exercised such Jurisdiction there, as the Lords in England have done here, and Claim such Rights from the Constitution of that Kingdom, by the Concessions and Grants of the Kings of England, and from Usage and Prescription ; and that it has been allowed them in England ; and never till now any Appeal was brought against any one of their Judgments, Decrees, or Orders whatsoever.

To shew what Authority England hath allowed to the Parliament of Ireland, see the Records following.

Ex Rot. Pat. de
Anno 30 Reg.
Regis Henrici
3. M. 1.

Quia pro communi utilitate Terra Hibernia & unitate Terrarum Regis Rex vult & de communi Concilio Regis provisum est quod omnes leges & Consuetudinis quae in Regno Anglia tenentur, in Hibernia teneantur & eadem terra eisdem legibus subjaceat, & per easdem regatur, sicut Dominus Johannes Rex cum ultimo esset in Hibernia statuit & fieri mandavit. Quia etiam quod Rex vult quod omnia brevia de Communi jure quae currunt in Anglia similiter currant in Hibernia sub novo sigillo Regis. Mandatum est Archiepiscopis, &c. Quod propace & tranquillitate ejusdem terra per easdem leges eos Regi & deduci permittant & eos in omnibus sequantur. In cujus, &c. Teste Rege apud Wudstock 19. die Septembris.

Pryn's Anim.
286.
29. Ed. 3.

King Edward the III^d. in the 29th Year of his Reign, by Advice of his Council made an Ordinance, Reciting, That whereas many of the Kingdom of Ireland, by reason of their great labour, charge, and expence in coming for England to be redressed, and to seek for Justice, have been reduced to great misery and want, and wholly ruined ; which the said King and Council taking into Consideration, for the quiet and good Government of the people of Ireland Ordained ; that in all Cases whatsoever, Errors in Judgment, in Records and Process, in the Courts of Ireland, shall be corrected and amended in Parliament in Ireland.

Co. 4. Inst. 12.
Selden's Titles
of Honour, part
2. cap. 5. sect.
26.

The *Modus tenendi Parliamentum* Was Exemplified and sent over by H. the II^d. the same in words with that in England, and in the end of it it is said that things in Ireland may be examined and corrected in *pleno Parlamento & non alibi* ; and my Lord Cook mentions the words of the old Record, *Terra Hibernia intra se habet Parliamentum & omnes & omnimodas curias prout in Anglia, & idem Parliamentum, facit leges, & mutat leges & illi de eadem terra non obligantur per Statut in Anglia quia hii non habent milites Parliamenti* ; and my Lord Cook mentions another old Roll of Parliament, *De Parliamentis tenendis singulis Annis in Hibernia*, which was likewise the old Law of England ; but till the Dissolution of the Parliament there in 1665. this Law by frequent Parliaments were more duly observed there, than in England.

Rot. Pat. 10.
Ed. 2. Co. 4.
Inst. 350.

St Hib. 10.
H. 7. cap. 22.

And there they have from time to time made their own Laws ; and in the Tenth H. 7th by one Act made all the Statutes of England of force there, which includes as well the Statutes relating to the Rights of Parliament, as other Statutes : And since that time they have by particular Acts there Re-enacted such subsequent Acts of England as they thought good for them.

And if the Lords should take Cognizance of such Appeals, the same inconveniences and vexations would attend the poor People there, which induced the Parliament to take away the High Commission-Court here, for that it brought People from the remote parts of the King-

Kingdom before them, whereas they might with less trouble and expence have had Justice in their Courts at home. It likewise agrees with the Reasons of the Two Ancient Statute of *England* mentioned by my Lord Cook in the Third of R. Second, That Persons having Estates in *Ireland* should reside there, else half of their Estates to go to maintain the Forts against the *Irish*: And it was the great mischief of Ancient times in *England*, that People were carried out of the Kingdom by Appeal to *Rome*, and poor People not able to follow them, thereby utterly undone; and should the Lords of *England* at this day inquire into, and unsettle things done by the Lords there, besides the endless trouble to their Lordships, the vexations and expence to the People, it would be of infinite mischief and disturbance to most of the Titles and Families who are now there in peace, and acquiesce on what has been done there; and if your Lordships take Cognizance of this, you may by the same reason take Cognizance of all other Things, Orders, and Proceedings whatsoever there.

Co. 4. Inst. 356.
Rot. Pat. 3 R. 2.
nu. 42.

Mischiefs and
Inconvenien-
ces if your
Lordships
hear this Ap-
peal.

The Exercise of the Jurisdiction of the Parliament in *Ireland*, both of Ancient and later times appeareth to be as in *England*, by their taking Cognizance of Impeachments, Writs of Error, and Appeals: Some instances whereof are hereunto annexed, though many of the Records and Journals of the Parliament of that Kingdom, have been by the many Troubles and Rebellions there, burnt and destroy'd; yet it doth appear, That the Lords there have from time to time exerted their Jurisdiction as aforesaid, and all their Orders and Judgments have till now stood firm; and that they have as near as they could from time to time in their Rules and Methods of Justice and Proceedings, followed the Presidents that Your Lordships, and Your Noble Ancestors made here.

Obj. 1. It is Objected, That a Writ of Error lies to the King's-Bench in *England*, from the King's-Bench in *Ireland*. And it is so; but then that has had a constant allowed usage to warrant it; and it does not follow, because a Writ of Error lies to the Kings-Bench here, that therefore Appeals would lie from the Chancery there, to the Chancery here, which might be as reasonable to be done, but never was attempted.

2. It is likewise Objected, That there lies an Appeal from the Chancery there, to the Lords here; and it is true that some, but very few, such Appeals have been brought, and these few only very lately, and occasioned by the want of the Parliament Sitting in *Ireland*, and passed *sub Silentio* without any opposition in that respect.

3. Another Objection is made from *Poining's Law* in the Tenth of H. Seventh; but that is no-
thing at all to this purpose, for it concerns only the appointing a new Method and Form of
passing of Acts of Parliament there, that they must be transmitted and approved at the Coun-
cil-Board in *England*, but that alters nothing of their judicial power or capacity so long esta-
blished and enjoyed by them.

St. 10. H. 7.
cap. 4.

4. Another Objection is made, That *Ireland* would be independent of *England*; and which is very undeserved if any body consider how unanimous and zealous the Protestants of *Ireland* have very lately, and on all occasions appeared for the *English* Interest there, to the loss of their Lives and all they had, and how little able they are to support themselves, without the Assistance and Protection of *England*: And the weakness of the Objections appears yet the more; for the same Argument may be made against their having any Parliament to sit in *Ireland*; for if they be allowed to have right to a Parliament, they must also be allowed the right of Parliaments, which they have hitherto exercised and enjoyed.

For which Reasons 'tis humbly hoped Your Lordships will not take any further Cognizance of the said Appeal.

James Sloane.
Fra. Annesley.

An Abstract of some of the Presidents in *Ireland*, which were certified from thence by the Lords Justices, and Council there, to Your Lordships.

8 H. 6. M. 70.
Prynne's Ani-
mad. 313, 314.

THE Prior of *Lanthony* removed by Writ of Error a Judgment in the Kings-Bench in *Ireland*, to the Parliament of *Ireland*, which was affirmed there: Afterwards the Prior removed the Record into the Kings-Bench in *England*; but the Chief Justice and the rest of the Judges being of Opinion that they could not reverse a Judgment given in the Parliament of *Ireland*, or take consufance of any matters in their Parliament there, the Prior petitioned the Parliament of *England*, setting forth the said Proceedings, and prayed Redress; but the Parliament here did not think it consufable before them, and therefore no Answer was ever given thereto, or any Proceedings thereon.

Nota,

The Judges of the Kings-Bench in England were then of Opinion, That the Parliament of Ireland had a good Judicature.

Rot. Hib. 26.
H. 6. cap. 34.

In a Case between *Chambers* and the Barons of the Exchequer, the Parliament there reversed a Judgment given in the Exchequer.

Rot. Parl. Hib.
27. H. 6. cap.
16.

In a Case between the Baron of *Galtrim* and the Earl of *Shrewsbury*, on a Petition to Parliament, it was ordered that a Stop should be put to the taking out of Executions on a *Scire facias* issued on a Recognizance in Chancery.

Rot. Parl. Hib.
27. H. 6. cap.
25.

Parliament ordered on Petition, That the Petitioner be quieted in the Possession of the Treasurership of *Limerick*, pursuant to a Decree of Chancery; he having been dispossessed by virtue of the King's Letters and Privy Seal out of *England*.

Nota,

This Record shews that the Parliament intermeddled in matters which concerned the Chancery, and also the King, in which he acquiesced.

Rot. Parl. Hib.
7. Ed. 4. c. 47.
25 July, 1634.

Anne, the Wife of Sir *William Welles*, Knight, and *Richard* his Son, Executors of the said Sir *William*, and *Matthew Philips*; Judgment given by the Lords in this Cause.

It was in Parliament declared, That an Adjournment of the House of Lords was necessary, it being a Court of Law, the highest in the Kingdom, that sends Writs of Error to the Kings-Bench.

20 Nov. 1634.

The Lords of *Ireland* order that the Officers of their House should receive their Fees in *Irish* Money; but in Cases of Bills, or Suits commenced in the House between Party and Party, the Clerk shall receive the same in *English* Money, as in *England*.

27 Feb. 1640.

An Impeachment brought up from the Commons to the Lords, by *Audley Mervin* against Sir *Richard Bolton*, Lord Chancellor, and others.

24 May, 1641.

Declaration and Protestation of the Lords and Commons of *Ireland*, That the Court of Parliament in *Ireland* is the Supreme Court of Judicature, to hear and determine all Civil and Criminal Causes whatsoever, as in *England*.

20 May, 1661.

Petition of *Nicholas Darcy* to the Lords in *Ireland*, That the Lord Chief Justice should Seal a Writ of Error, and give Copies of Records to the Petitioner and heard Council.

15 June, 1661.

By the House of Lords of *Ireland*, Ordered, That the Church be immediately restored to all their Possessions.

5 July, 1661.

Ordered, That the Lord Chancellor do Seal a Writ of Error in the Case of the Lord *Clancarty's* Outlawry, returnable in this House.

27 July, 1661.

Lord Viscount *Ranelagh's* Petition and Appeal from the High Court of Chancery to be relieved against a Decree made there, Anno 1658, at the Suit of Dame *Catherine Bingham*, and *John Paulet*, Gent. Upon hearing of the said Cause the said Decree was Reversed.

2 June, 1662.

Ordered by the Lords House, that the Bishop of *Derry* be put in Possession of *Termonderry* near *London-Derry*, the said Bishop having been in Possession thereof in 1641.

Nota, *This was part of the Land which is now in Dispute.*

24 June, 1662.

The Cause between *Theophilus Lea*, and *William Leslie*, concerning matter of Title, not coming hither by way of Appeal from any other Court, Ordered, That the Cause be therefore dismissed from the House to the Common Law.

20 Dec. 1662.

Kean o Hora & Uxor, against *Robert Parkes*, Esq; Defendant, *Parks* obtained a Judgment in the King's-Bench against the Plaintiff, which Judgment was removed by Writ of Error into the House of Lords, upon which a *Scire Facias* issued to the said *Parkes*, and the return thereupon made, and a day appointed for Arguing the Errors.

9 Feb. 1662.

Ordered by the Lords, That some of the Judges prepare a Draught for the House, that no cause or matter in difference between Party and Party, which may be determined in any of his Majesty's ordinary Courts of Justice or Equity, shall be admitted to receive Hearing before the House, except in case of Appeal, Writ of Error, or Matter of Privilege.

19 Mar. 1662.

Petition, and Appeal of Lord Viscount *Ely* of *Loftus*, against a Judgment obtained against his Father Lord Chancellor *Loftus* at Council-Board, before the then Lord Lieutenant and others, and several other Proceedings in the Courts of Law there had upon the said Judgment, and several Orders of the House thereupon.

29 Octo. 1695.

Appeal of the Earl of *Meath*, and *Cecilia*, Countess of *Meath*, his Lady, against the Lord *Ward*, from a Decree made in the Chancery of the County-Palatine of *Tipperary*, by which certain Lands were Decreed to the Lord *Ward*, the Decree Reversed, and the Possession of the said Lands restor'd to the said Earl.

29 Octo. 1695.

Appeal of *Samuel Maynard* against an Order conceived in the Chancery Court of the County Palatine of *Tipperary*, directing an issue at Law, on hearing, the said Appeal was dismissed.